

**STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF MINING, LAND AND WATER
SURVEY SECTION**

Preliminary Decision

**Petitioner: State of Alaska, Department of Natural Resources
Section Line Easement Vacation
EV 3-345**

Petitioned Action:

EV 3-345 is located approximately 100 miles WSW of Fairbanks. The property is located within Sections 29, 30, 31, 32 of Township 4 South, Range 17 West, Fairbanks Meridian, Alaska. The petitioner is requesting vacation of the portion of four section line easements (SLEs) lying within the proposed subdivision, ASLS 2020-44 Habanero Subdivision. The proposed subdivision will dedicate four 100-foot wide public access easements along lot lines as alternate access for the vacated SLEs, as shown on Attachment A.

The reason cited by the applicant: "To allow for better development opportunity of the subdivision parcels. The subject SLEVs will not be necessary for access due to the sufficient PAEs either exist as General Use Lands or are being dedicated by this plat for ASLS 2020-44."

Legal Authority:

AS 19.10.010, AS 29.03.030, AS 38.05.035, AS 38.05.945, AS 40.15.070, AS 40.15.300-.380, 11 AAC 51.065, 11 AAC 53.600-730.

The Alaska Department of Natural Resources (DNR) is the platting authority for the state in the Unorganized Borough.

The Alaska Department of Transportation and Public Facilities (DOT/PF) and the Department of Natural Resources (DNR) have concurrent authority for approving the vacation of SLEs.

Administrative Record:

The DNR Survey Case File EV 3-345 constitutes the administrative record used for the basis of this decision.

Borough:

The proposed action is located within the Unorganized Borough (UoB).

State Easement Interest:

50 foot-wide section-line easements exist on each side of the protracted section lines common to Sections 29 & 30, Sections 29 & 32, Sections 30 & 31, and Sections 31 & 32 all in Township 4 South, Range 17 West, Fairbanks Meridian, Alaska, pursuant to AS 19.10.010. (See Discussion 1).

Underlying Interest:

The State of Alaska, DNR owns the estate underlying the section-line easements proposed for vacation.

Alternate Route:

Each 50-foot wide section line easement proposed for vacation will be replaced by 50-foot public access easements. Alaska State Land Survey 2020-44 Habanero Subdivision will dedicate four 100-foot public access easements along lot lines within the vicinity of the section line easements proposed for vacation. These newly dedicated 100-foot public access easements will serve as alternate access. Please see Attachment A for a visual depiction of the alternate PAEs.

Land Management Policies:

1) Pursuant to 11 AAC 51.065, before any vacation, modification, or relocation of a public easement, the petitioner must demonstrate to the satisfaction of the department that equal or better access is available. Equal or better access must be access that is:

- protected by an easement of record that is adequately wide for the purpose; if the easement of record is new, the petitioner must arrange for a note in the vacation document to be recorded that identifies the new easement as a replacement for the vacated easement; and,
- at least equally usable, considering length, type of terrain, and level of improvement, as the easement to be vacated; if development or improvement is needed to make the replacement easement at least equally usable, the petitioner must arrange for the development or improvement to be completed before the vacation takes effect.
- the department will determine if the vacation is in the State's best interest

Public Use Patterns:

The proposed ASLS 2020-44 Habanero Subdivision is located in an area of Alaska that is largely undeveloped. An EV 3-345 field inspection was not conducted; therefore, it is unknown whether vehicles or pedestrians have been or are currently using the portions of the SLEs proposed to be vacated. However, satellite imagery indicates the area proposed for vacation is not currently being utilized by the general public for vehicular, pedestrian or utility purposes.

Practicality of Use:

Section line easements along protracted section lines are not practical to use for legal public access until the location of the section line has been determined by an official survey. To avoid trespass issues the exact location of the easement must be known before it can be used. In addition, pursuant to Footnote 15 of the 1969 Opinions of the Attorney General No. 7, "a section line right-of-way attaches to the protracted section line subject to subsequent conformation with the official public land survey" (emphasis added). Only then do public access rights pursuant to AS 19.10.010 attach to the section line.

The protracted sectionline easements proposed for vacation are unconstructed. They run through vegetated terrain. Current satellite imagery indicates the public is not using these SLE's for public

access at this time. The ROWs proposed in ASLS 2020-44 will offer equal or better access. The proposed public use easements dedicated by ASLS 2020-44 will be sufficient for present and reasonably foreseeable future uses.

Agency Review:

Initial Agency Review of the proposed action began on February 14, 2024, and concluded April 5, 2024. Agencies notified included Alaska Department of Fish and Game (ADFG), DNR Division of Parks and Outdoor Recreation (DPOR), Department of Transportation & Public Facilities (DOT&PF) Northern Region Office, DNR Division of Mining, Land and Water – Northern Regional Office (NRO) and the Alaska Mental Health Trust Land Office (MHTLO).

Agency Comments:

1. No comments or objections were received from the agencies listed above. All submitted comments of non-objection regarding this easement vacation.
2. No other comments or objections on the proposed action were received.

Discussion:

1. **Determination of the existence of the Section-Line Easements:**
 - a. The U.S. Rectangular Survey Plat for Township 4 South, Range 17 West, Fairbanks Meridian, Alaska, was approved by BLM on May 25, 1988. However, the subject section lines are protracted on this plat. This plat only surveyed the exterior of the township, and interior section lines are protracted.
 - b. The 1969 Opinions of the Attorney General No. 7 - DNRs most current opinion regarding Section Line Dedications [i.e. section line easements] on protracted section lines - states in part " ... where protracted surveys have been approved, and the effective date thereof published in the Federal Register, then a section line right-of-way attaches to the protracted section line subject to subsequent conformation with the official public land surveys."
 - i. On February 16, 1960, the Protraction Survey of Townships 1 to 4 South, Ranges 17 to 20 West, Fairbanks Meridian, Alaska, according to Protraction Diagram (F11-1) was approved by BLM. The subject section lines common to Sections 29-32, T4S, R17W, FM are depicted as protracted lines on this plat.
 - ii. On March 30, 1960, Notice of Filing of said Protraction Diagram (F11-1) was published in the Federal Register. According to said 1969 Opinions, a section line right-of-way attached to the protracted section line on this date.
 - c. The lands underlying the SLEs proposed to be vacated were conveyed to the State of Alaska by Federal Patent 50-88-0328 on September 1, 1988. On this date, a 50' State section line easement attached to the protracted section line, "subject to subsequent conformation with the official public land surveys." AS 19.10.010 states in part "*A tract 100 feet wide between each section of land owned by the state, or acquired from the state, and a tract four rods wide between all other sections in the state, is dedicated for use as public highways...*" (emphasis added). Note that under AS 19.10.010, state lands do not need to be surveyed for SLE's to attach.
 - d. BLM Historical Index research is not needed for State SLEs, which are created on state lands by dedication in accordance with state laws.
 - e. **For surveyed or unsurveyed land owned by the state on or after July 1, 1960, the width, as identified in AS 19.10.010, is 50 feet (11 AAC 51.025, editor's note #7).**

2. The proposed alternate access is reasonably comparable and meets the requirements for vacation of the subject section-line easements pursuant to 11 AAC 51.065. The proposed alternate route is adequately wide to satisfy all present and reasonably foreseeable uses for continued access to the lake. Continued access to adjacent lands will not be affected by this action.
3. If underlying RS 2477 SLE's (33') exist pursuant to prior state/territory legislation, they are also being vacated by this action.

Approval of the proposed action is contingent upon the following conditions:

1. Pursuant to AS 38.05.945, a Public Notice must be completed. The Department of Natural Resources may modify the decision after analyzing public comments.
2. Approval of a State Platting Resolution.
3. A final plat (owner signed, surveyor sealed mylar) must be submitted within 18-months from the date of the vacation approval. The survey plat must be filed in accordance with the provisions of AS 40.15.300-380 and in compliance with the provisions of 11 AAC 53.600-.900.
4. Submittal of a current Certificate to Plat or a State Title Report.

Recommendation:

Based on our findings, the petitioner meets DNR's requirements to vacate the subject section-line easements segments. The proposed vacation is in the State's best interest. Therefore, the Division of Mining, Land and Water, Survey Section recommends approval of this action and may proceed with adjudication and public notice in accordance with AS 38.05.945 and 40.15.305(e).

Prepared by:

Victoria Braun
Victoria Braun
Natural Resource Specialist 2

April 15, 2024
Date

Approved by:

Gwen M. Gervelis
Gwen M. Gervelis, PLS
Chief, Survey Section

4/15/2024
Date

PUBLIC NOTICE:

**STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF MINING, LAND AND WATER
SURVEY SECTION**

**Notice of Public Hearing and Notice of Preliminary Decision
Section Line Easement Vacation
EV 3-345**

Per 11 AAC 51.065, the Department of Natural Resources, Division of Mining, Land and Water has made a Preliminary Decision (PD) giving contingent approval to a petition to vacate segments of eight section-line easements lying within Sections 29, 30, 31 and 32, T4S, R17W, FM, AK. Please refer to the PD for full details.

The public is invited to comment on the PD. Copies are available from DMLW, 550 W 7th Avenue, Suite 650, Anchorage, AK 99501-3576 or <https://aws.state.ak.us/OnlinePublicNotices/>. **All written comments must be received at DMLW by March 16, 2024. To be eligible to appeal, one must respond in writing during the comment period or provide public hearing testimony.** If public comment analysis indicates the need for significant changes to the PD, additional public notice will be given. If no significant change is required, the PD, including any minor changes, will be issued as a Final Decision (FD). To obtain a PD copy, reference case number EV 3-345; include date, your email, mailing address and telephone number. If you have any questions, contact DNR, Victoria Braun, (907) 375- 7733 or victoria.braun@alaska.gov.

Notice is hereby given that DNR, under the authority of 11 AAC 51.065(b) and AS 40.15.305 shall hold a public hearing to gather information and to obtain public input regarding the proposed section-line easement vacations. **The public hearing will be held on on Month 17, 2024 via MS Teams at 11:00am Alaska Standard Time.** Persons wishing to attend the public hearing may do so using MS Teams. The meeting ID is: **217 962 840 841**. The meeting passcode is: **hTjku7**. If you do not have MS Teams and would like to participate, you may join the public hearing by phone for the audio portion of the hearing. To join for the audio only, you must call 1-907-202-7104. The Phone Conference ID is: **771 365 928#**.

DMLW reserves the right to waive technical defects in this publication.

Those with audio impairments may call Anchorage DNR Public Information Center, 10-5, M-F, TDD#(907) 269-8411.